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FEDERAL COMMUNICATIONS COMMISSION

In Re)	MM DOCKET No.:	97-122
)		
GERARD A. TURRO)	File Nos.	BRFT-970129YC
)		BRFT-970129YD
For Renewal of License)		
for FM Translator Stations)		
W276AQ(FM), Fort Lee, NJ,)		
and W232AL(FM), Pomona, NY)		
)		
MONTICELLO MOUNTAINTOP)		
BROADCASTING, INC.)		
)		
Order to Show Cause Why the)		
Construction Project for FM)		
Radio Station WJUX(FM),)		
Monticello, NY, Should Not)		
Be Revoked)		

Volume IX

Pages: 1081 through 1304
Place: Washington, D.C.
Date: December 8, 1997

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

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Washington D.C. 20554

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Courtroom 1
FCC Building
2000 L Street, N.W.
Washington, D.C.

Monday,
December 8, 1997

The parties met, pursuant to adjournment,
at 10:00 a.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
William Gaghan	--				
By Mr. Naftalin	--	1087	--	1208	--
By Mr. Riley	--	1183	--	--	--
By Mr. Aronowitz	--	--	1191	--	--
William Owen	--				
By Ms. Friedman	--	1213	--	--	--
By Mr. Helmick	--	1227	--	--	--
By Mr. Naftalin	--	--	1240	--	--
David C. Lynch	--				
By Ms. Friedman	--	1253	--	1262	--
By Ms. Bavender	--	1254	--	--	--
By Mr. Naftalin	--	--	1262	--	--
Charles J. Garland	--				
By Mr. Aronowitz	--	1275	--	--	--
By Mr. Helmick	--	1296	--	--	--

E X H I B I T S

<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
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Monticello Mountaintop Broadcasting:

MMBI-6 (Withdraw)

Hearing Began:	10:00 a.m.	Hearing Ended:	3:40 p.m.
Recess Began:	12:12 p.m.	Recess Ended:	1:34 p.m.

P R O C E E D I N G S

JUDGE STEINBERG: Let's go on the record.

Okay, we are on the record.

Good morning. I trust everybody had a nice restful weekend, and everybody is raring to go this morning.

MR. HELMICK: Sarcasm intended for the record?

JUDGE STEINBERG: Sarcasm intended for the record, right.

Yes, Mr. Riley.

MR. RILEY: Your Honor, if you are going to ask for preliminary matters, I have copies of Exhibit No. 9.

JUDGE STEINBERG: Yes, that would be a good idea.

MR. RILEY: Your Honor, we are on the record, are we?

JUDGE STEINBERG: Yes.

MR. RILEY: I am going to give back to the reporter for the one that was stamped yesterday and one extra of No. 9, and similarly, of No. 8, MMBI Exhibit No. 8, and I have one of each for the reporter.

JUDGE STEINBERG: Thank you.

Okay, now, MMBI No. 6.

MR. RILEY: Yes, Your Honor.

JUDGE STEINBERG: My notes indicate that we skipped that during the admission session, and that was going to be dependent upon whether or not Mr. Blabey

1 testified?

2 MR. RILEY: That is right. We will withdraw MMBI,
3 or we will not offer MMBI, or we will not offer MMBI.

4 JUDGE STEINBERG: I don't even know if it was
5 identified.

6 MR. RILEY: It was identified at the admissions
7 session, and I think we specifically skipped it for a ruling
8 on its admission later. We didn't offer it at the
9 admissions session.

10 JUDGE STEINBERG: Right.

11 MR. RILEY: But I think it was marked for
12 identification.

13 JUDGE STEINBERG: Okay, so --

14 MR. RILEY: It will not be offered. That's MMBI-6
15 which was extracts from the deposition of Eugene Blabey.

16 JUDGE STEINBERG: Okay, so I will just rule MMBI-6
17 was withdrawn.

18 (The document referred to,
19 having been previously marked
20 for identification as MMBI
21 Exhibit No. 6, was withdrawn.)

22 JUDGE STEINBERG: Okay, no more preliminary
23 matters?

24 Now, the next witness is Mr. Gaghan; is that
25 correct?

1 MR. HELMICK: That's correct, Your Honor.

2 JUDGE STEINBERG: And Mr. Gaghan is in the witness
3 chair, and would you raise your right hand?
4 Whereupon,

5 WILLIAM GAGHAN
6 having been first duly sworn, was called as a witness herein
7 and was examined and testified as follows:

8 JUDGE STEINBERG: Please state your name and
9 address for the record, please.

10 THE WITNESS: William Gaghan, 48 Williams Street,
11 Little Falls, New Jersey.

12 JUDGE STEINBERG: Is Mr. Gaghan now available for
13 cross-examination?

14 MR. HELMICK: Yes, he is, Your Honor.

15 JUDGE STEINBERG: Okay, who will be going first?

16 MR. NAFTALIN: I will, Your Honor.

17 JUDGE STEINBERG: Mr. Naftalin.

18 Why don't we put in front of Mr. Gaghan now copies
19 of MMB Exhibit 15.

20 MR. NAFTALIN: I brought an extra.

21 MR. ARONOWITZ: Is that an extra?

22 MR. NAFTALIN: Sure.

23 CROSS-EXAMINATION

24 BY MR. NAFTALIN:

25 Q Good morning, Mr. Gaghan.

1 Q Good morning.

2 Q Thank you for coming.

3 I would like to go over with you, as I have with,
4 I think, every witness here, a few definitions for
5 discussion purposes so we don't continually repeat call
6 signs and file numbers and that sort of thing, and just
7 going to ask you -- actually, I think we did something a lot
8 like this in your deposition

9 But will you agree that for purposes of the
10 examination today if we refer to the Fort Lee translator, we
11 will be referring to FM translator Station W276AQ in Fort
12 Lee, New Jersey, licensed to Gerard A. Turro?

13 A Okay.

14 Q And if we refer to the Pomona translator, we will
15 be referring to FM translator Station W232AL in Pomona, New
16 York, also licensed to Gerard A. Turro?

17 A Yes, sure.

18 Q Okay. And if we refer to the Monticello Station,
19 Mr. Gaghan, will you agree that we will referring to FM
20 Radio Station WJUX in Monticello, New York, formerly holding
21 the call sign of WXTM, licensed to Monticello Mountaintop
22 Broadcasting, Incorporated?

23 A Okay.

24 Q And if we refer to the Dumont Studio, will you
25 agree that we will be referring to the program production

1 studio of Jukebox Radio located in Dumont, New Jersey?

2 A Okay, sure.

3 Q Okay. And if we refer to the microwave or the
4 microwave station, Mr. Gaghan, will you agree that we will
5 be referring to what had formerly been microwave radio
6 station WMG499 -- and I represent to you that that was a
7 correct call sign in case you didn't know it -- microwave
8 Radio Station WMG499, which had been licensed to Mr. Turro?

9 A Okay.

10 Q And, finally, Mr. Gaghan, if we refer to
11 Universal, we will be referring to Universal Broadcasting of
12 New York, Incorporated, the licensee of WVNJ, Oakland, New
13 Jersey?

14 A Okay.

15 Q Thank you.

16 Mr. Gaghan, it's true, isn't it, that you worked
17 at Jukebox Radio for some time prior to October 1994,
18 through approximately late May 1995; is that correct?

19 A Yes, I think it was even '93, I started.

20 Q Well --

21 A That's true.

22 Q Okay, thank you.

23 Prior to working at Jukebox Radio, is it correct
24 that your -- in terms of formal education, your highest
25 achievements have been graduation from Garfield High School

1 and approximately four-month program at the Connecticut
2 School of Broadcasting?

3 A Yes.

4 Q Thank you.

5 And in terms of your professional career, Mr.
6 Gaghan, is it fair to characterize it as a producer of music
7 programming, predominantly for radio, but a program oriented
8 kind of career?

9 A No, not really. I spend more time on the air.

10 Q Okay.

11 A As an announcer than anything.

12 Q Okay, that's fine.

13 But you also, you do, at least some of the time,
14 operate through a small company you formed called Simmons
15 Overmere; is that correct?

16 A Yes. Yes.

17 Q S-I-M-M-O-N-S, O-V-E-R-M-E-R-E, Simmons Overmere.

18 Well, the point I'm trying to get at is you don't
19 have a detailed knowledge of the technical side of radio
20 broadcasting

21 Q No.

22 Q Is that correct?

23 A No.

24 Q Is it safe to say you're not --

25 JUDGE STEINBERG: Meaning no, it's not correct, or

1 no, you don't have any technical --

2 BY MR. NAFTALIN:

3 Q Is it correct to say that you do not have a
4 technical background in radio?

5 A No, not an extended technical knowledge. I know
6 some things. Some things I have been taught through the
7 years.

8 Q Sure.

9 A But to know the whole gamut A to Z, no.

10 Q Right. Is it fair to say you're not a technical
11 guy when it comes to radio?

12 A Not really. I wouldn't -- I mean, I could do a
13 few things, but I would say not really.

14 Q You're not a technical man?

15 A No.

16 Q Okay. Now, when you worked at Jukebox Radio, Mr.
17 Gaghan, you were actually -- you were compensated for your
18 work through the Simmons Overmere Company; is that correct?

19 A Yes. Not in the very beginning, but after the
20 first few months of employment there, yes.

21 Q Okay. And after leaving Jukebox Radio, you --
22 perhaps with a short break -- you went directly to work for
23 Universal at WVNJ; is that correct?

24 A Yes.

25 Q Okay. And you've been employed at WVNJ ever

1 since?

2 A Yes.

3 Q So that was say early to mid June 1995 through the
4 present?

5 A Yes.

6 Q Okay. Now, going back to the time frame of late
7 October 1994 through the time you left Jukebox Radio, was it
8 your understanding that Jukebox Radio audio programming was,
9 at least some of the time, sent directly from the Dumont
10 studio to the Fort Lee translator?

11 A Yes.

12 Q And was it also your understanding that at least
13 some of the time the Jukebox Radio programming was sent from
14 the studio directly to the Monticello FM station?

15 A Yes.

16 Q And was it your understanding that when Jukebox
17 Radio programming was sent from the Dumont studio to the
18 Monticello FM station, that that was either by microwave
19 dish or telephone line?

20 A Yes.

21 Q And was it your understanding that there is a big
22 microwave dish on the roof of the building where the Dumont
23 studio is that sent that programming to the Monticello
24 station?

25 A No, it was the building next door to the Dumont

1 studios.

2 Q All right. So on the roof of the building next
3 door to the Dumont studio --

4 A Yes.

5 Q -- your understanding was there was a big
6 microwave dish that sent programming down to the Monticello
7 station?

8 A Yes.

9 Q Okay. Let me just show you Turro Exhibit 29.
10 Mr. Gaghan, I'm showing you previously admitted
11 Turro Exhibit No. 29, which is a photograph.

12 Can you tell me one way or the other whether
13 that's the big microwave dish we've just been referring to?

14 A From the way this picture was taken, I really
15 can't tell.

16 Q Okay. It might have been; it might have not have
17 been?

18 A See, I don't remember it directly being on the
19 edge of the building. I remember it being more to the left.
20 We were in the studios where the building here, and right
21 next door was the other building where the dish was.

22 Q Okay.

23 A This looks like it's more to the side.

24 Q All right. Do you recall more than one large dish
25 upon those roofs?

1 A No, I just recall the one.

2 Q Okay. And the dish you remember was
3 approximately, in the ballpark, eight to 12 feet in
4 diameter, something like that?

5 A Sure.

6 Q Okay, thanks.

7 Now, Mr. Gaghan, while you were at Jukebox Radio,
8 again, in the time frame late October of 1994 through the
9 time you left there, you worked a lot in the on-air studio
10 at the Dumont studio, didn't you?

11 A Yes.

12 Q Okay. And that's where the remote control units
13 that were used for remotely controlling the Fort Lee
14 translator and the Monticello station were located, weren't
15 they?

16 A Yes.

17 Q And in your statement, which is Mass Media Bureau
18 Exhibit No. 15, which is before you, you discuss your
19 understanding about how some of that remote control
20 equipment worked, don't you, sir?

21 A Yes.

22 Q Okay. And with respect to the remote control unit
23 used to control the Fort Lee translator, it was your general
24 understanding that if light number one was lit on that
25 remote control unit then that meant programming was being

1 sent directly from the Dumont studio to the Fort Lee
2 translator; is that correct?

3 A Yes.

4 Q And it was your understanding that if programming
5 was being sent directly from the Dumont studio to the Fort
6 Lee translator, it was being carried by a microwave radio of
7 some kind; is that correct?

8 A My understanding was either a microwave or a
9 telephone line.

10 Q Okay. But you weren't sure which one?

11 A No.

12 Q Is that right?

13 A No, no.

14 Q Could it have been the microwave that might have
15 been associated with the large dish you were just talking
16 about?

17 A Could have, but I'm not sure.

18 Q So, in your mind, you understood that programming
19 was getting from Dumont to Fort Lee but exactly how it got
20 there it wasn't in your direct knowledge; is that right?

21 A Well, I knew it was either telephone line or
22 microwave, but that's about the extent of it.

23 Q Okay. And you do know that from your personal
24 direct observation and understanding of the facilities, you
25 just understood that more generally?

1 A I'm sorry. Can you repeat your question?

2 A Yes, that was a bad question.

3 Q Let me go through this quickly.

4 JUDGE STEINBERG: Mr. Gaghan, you didn't know that
5 of your own knowledge?

6 THE WITNESS: No, I was told this.

7 MR. NAFTALIN: Okay.

8 BY MR. NAFTALIN:

9 Q Mr. Gaghan, you never personally went to the Fort
10 Lee translator and examined the Fort Lee translator's
11 transmitter or electronics, all the --

12 A No.

13 Q -- equipment that made it operate, right?

14 A No.

15 Q And you never personally went to the Pomona
16 translator and examined all the equipment that made it
17 operate, did you, sir?

18 A No.

19 Q And same question for the Monticello station, Mr.
20 Gaghan, you never went to the Monticello station or its
21 transmitter site and personally examined the equipment that
22 made the facilities that made that station operate?

23 A No.

24 Q Okay. As a matter of your understanding, Mr.
25 Gaghan, you did understand that the Fort Lee translator

1 could receive Jukebox Radio programming off the air from the
2 Pomona translator, though, didn't you?

3 A Yes.

4 Q And, in addition, wasn't it also your
5 understanding that the Fort Lee translator could receive
6 Jukebox Radio programming off the air directly from the
7 Monticello station?

8 A No. My understanding always was, was Monticello
9 to Pomona to Fort Lee. No, I never heard anything
10 Monticello directly to Fort Lee.

11 Q Okay. One second.

12 All right, Mr. Gaghan, I would like to get through
13 a couple question about your feelings towards Mr. Turro.

14 A Sure.

15 Q I don't want to belabor this in any way. But
16 would you agree that you harbor feelings of resentment or
17 anger towards Mr. Turro?

18 A Yeah, let me just say, I mean, I don't like him.
19 I mean, I don't wake up in the morning saying, oh, my God, I
20 can't stand Jerry Turro. I just -- I don't like him.

21 Q Okay, fair enough.

22 A Okay.

23 Q Would you agree that -- all right, isn't it true,
24 Mr. Gaghan, that in the summer of 1996 you confronted Mr.
25 Turro in the Beehive Restaurant in Burgen Field, New Jersey,

1 where he was having lunch at a table with another man and --

2 A Yes.

3 Q Okay. And that you said something along the
4 lines, "I hope you choke on that food"?

5 A Sure.

6 Q Okay. Let me show you one other thing. Let me
7 show you Turro Exhibit No. 8. Mr. Gaghan, we will not ask
8 many questions about Turro Exhibit No. 8 at all, but take a
9 look at it, sir, and let me know when you feel like you've
10 read through it.

11 (Witness reviews document.)

12 JUDGE STEINBERG: Okay, page 2 is out, right?

13 MR. NAFTALIN: Yes. It's only a one-page exhibit,
14 Turro 8, the very first page is the only one in evidence.

15 JUDGE STEINBERG: Okay.

16 BY MR. NAFTALIN:

17 Q Okay?

18 A Sure.

19 Q Now, Mr. Gaghan, Turro Exhibit No. 8 is a one-page
20 letter you wrote to me; isn't that right?

21 A Yes.

22 Q Now, there is no date on it, so is it fair to say
23 that you wrote this letter say in September or October time
24 range of 1997?

25 A Sure.

1 Q My only -- my only question for you, sir, is with
2 respect to the last sentence of the letter, was that an
3 honest expression of your feelings?

4 Please feel free to read it again.

5 A Yeah, the only reason why I put that was because
6 it was the first two months, he paid me \$45 a week times
7 eight.

8 Q Well, okay --

9 A That's how I was able to come to that, that's all.

10 Q That last sentence of Turro Exhibit No. 8
11 expressed your feelings or your attitude?

12 A I don't know what you mean. You feelings your
13 attitudes toward what?

14 Q Towards Mr. Turro.

15 A I don't know what you mean by that. How could you
16 say that just because I put down, you know, I note for the
17 first two months what he paid me. Would that represent some
18 feelings to Mr. Turro?

19 It's just that I was able to recall because he
20 paid me cash the first two months, and I knew what it was.

21 Q Well --

22 Q Otherwise, I mean, everything else was deposited
23 into my account. It's just that it may be, you know, I
24 didn't keep the best of records. I mean, everything was
25 deposited.

1 Q Okay, sure, Mr. Gaghan. I'm not asking about
2 accuracy of anything. I'm saying the sentence says, "The
3 only records I do have is when Turro paid me under the
4 table, which I'm sure he never reported."

5 Were you sure he paid you under the table, Mr.
6 Gaghan?

7 A Well, I myself and some other employees there.

8 Q Okay. And you're confident that he didn't report
9 payments to the IRS?

10 That's what I mean by attitude. That's a
11 fairly -- would you agree that's a fairly aggressive thing
12 to commit to a letter?

13 A I wouldn't say fairly aggressive. I was just
14 stating that he probably didn't report it.

15 Q He probably didn't report it to the IRS?

16 A Um-hmm.

17 Q Of course, you didn't check on that yourself, did
18 you, Mr. Gaghan?

19 A No.

20 Q Okay. So that was an expression of how you
21 thought Mr. Turro would operate; isn't that right?

22 A That's how Jerry Turro does operate.

23 Q And that's your belief, isn't it, sir?

24 A Yes.

25 Q Okay. Now, Mr. Gaghan, you started employment at

1 WVNJ early to mid June of 1995; is that right?

2 A Yes.

3 Q And you understand Mr and Mrs. Warshaw to be the
4 owners and kind of the bosses at WVNJ; is that right?

5 A Them and Ron Lustberg

6 Q Okay. And is it your recollection that Vincent
7 Luna started at WVNJ a month or two or three after you
8 started there?

9 A Uhmmmm.

10 Q Let me be more specific if that's confusing.

11 Would you agree one way or the other whether Mr.
12 Luna started work at WVNJ at approximately early August
13 1995?

14 A I think it was later than that, cause I know --
15 well, in the beginning he was just a part-time worker.

16 Q Well, as a part time. By employment, I --

17 A Oh, yeah, sure.

18 Q -- didn't mean full time.

19 A Part time, sure. He worked -- I mean, I had three
20 shifts available and I offered it to him, and he worked it.

21 Q And by this, I just mean he's around the station,
22 he's being paid to do something. It doesn't have to be full
23 time.

24 A Yes.

25 Q Okay. So he starts some kind of work at WVNJ at

1 approximately early August 1995?

2 A It's either August or September. I just don't
3 recall.

4 Q You don't recall either way? Okay.

5 Now, Mr. Gaghan, you have before you your
6 statement, which is Mass Media Bureau Exhibit No. 15, and we
7 will go through it, but I want to ask you a few general
8 questions now. If you want to stop and look at it, that's
9 fine.

10 A Okay.

11 Q I'm not asking you not to, but a couple of general
12 questions first.

13 Your statement, which is dated October 22, 1997,
14 has attached to it an earlier statement of yours dated
15 August 10, 1995, doesn't it?

16 The reporter needs you to say yes or no, Mr.
17 Gaghan, when you're ready.

18 JUDGE STEINBERG: Well, he's going to look at it.

19 MR. NAFTALIN: I'm sorry.

20 JUDGE STEINBERG: And answer.

21 THE WITNESS: Yes.

22 MR. NAFTALIN: He was nodding.

23 THE WITNESS: Yes.

24 MR. NAFTALIN: Okay.

25 //

1 BY MR. NAFTALIN:

2 Q Now, in general terms, your statement, and by that
3 I mean the whole thing, discusses some of your experience at
4 Jukebox Radio; is that correct?

5 A Yes.

6 Q Okay. And you refer to an FCC inspector in your
7 statement, do you not?

8 A Yes.

9 Q And you refer to the fact that an FCC inspector
10 came by the Dumont studio in April of 1995, at some point?

11 A I think it was '96.

12 Q Which -- you weren't employed there.

13 A I thought it was '95.

14 Q Well, you left the -- well, take a look, Mr.
15 Gaghan. I don't have a problem.

16 JUDGE STEINBERG: Do you have a specific part of
17 the statement to which you can refer Mr. Gaghan?

18 MR. NAFTALIN: Yes, sure.

19 JUDGE STEINBERG: Is the purpose of the
20 questioning to question dates or to question the facts?

21 MR. NAFTALIN: I'm questioning -- I'm not
22 challenging the facts. I am trying to pin -- he also
23 discusses the incident in here.

24 JUDGE STEINBERG: Right.

25 MR. NAFTALIN: And I am trying to relate the time

1 of the incident to the visit by the inspector, that's all.

2 JUDGE STEINBERG: Which portion of the statement
3 are you referring? The '95 portion or the '97 portion?

4 MR. NAFTALIN: I will get to it in one second,
5 Your Honor. I didn't know we --

6 JUDGE STEINBERG: Let him give you a reference.

7 THE WITNESS: Sure.

8 JUDGE STEINBERG: It might be easier.

9 THE WITNESS: Okay, thank you.

10 MR. NAFTALIN: I thought it was April 1995.

11 JUDGE STEINBERG: Try page 247 or 249.

12 MR. NAFTALIN: Thank you, Your Honor. I hadn't
13 prepared on this.

14 BY MR. NAFTALIN:

15 Q Mr. Gaghan, why don't you turn to, surprising
16 enough, the Bates stamp -- you see the pages numbers at the
17 very bottom --

18 A Yeah, I have it there

19 Q -- there, 249?

20 A Yes.

21 Q So you say, "I recall one specific episode in
22 April of this year." That's --

23 A Yes, '95. Yes.

24 Q Thank you.

25 A Now it comes back to me.